(3)

Supreme Court, U.S.
FILED
MAY 2 - 2005
OFFICE OF THE CLERK

04-1183

No. _____

IN THE

Supreme Court of the United States

PHILIP D. OVERSTREET

Petitioner,

v.

LEXINGTON FAYETTE URBAN COUNTY GOVERNMENT
CIVIL SERVICE COMMISSION

Respondent.

On Petition For Writ Of Certiorari
To The Sixth Circuit Court of Appeals

REPLY IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

JAMES M. MORRIS
Counsel of Record
MORRIS & MORRIS, P.S.C.
217 North Upper Street
Lexington, KY 40507
(859) 281-6981
Counsel for Petitioner

Petitioner, under appropriate rules of this Court, respectfully submits this Reply Brief in order to provide clarity to the confusion that Respondent has attempted to create.

I. *RESPONDENT'S CITATION TO A "COMPANION CASE" IS GROSSLY MISLEADING AND HAS BEEN REJECTED BY THE COURT BELOW.*

Respondent's reference to a purported "companion case" is inane. The so-called "companion case" dealt solely with the local government's actions, whereas the within matter revolves around the ***Commission's*** failure to protect Petitioner's Constitutional rights before suspending the Petitioner. Thus, these two cases involved completely ***different*** parties, ***different*** facts, and ***different*** issues of law, as determined by the district court. Ironically, it was exactly this type of distortion that led the district court to impose sanctions against Respondent for its ongoing misconduct in the within matter. Respondent's continued attempt to mislead the judiciary – especially at this level -- is extremely troublesome.

It is clear that Respondent's heavy focus on this non-issue has been done solely to attempt to mislead and confuse this Court on a simple issue of federal jurisdiction, and to avoid the fact that Respondent actually created this situation by obtaining removal based solely upon federal jurisdiction. The issue presented by the within matter deals solely with whether the Sixth Circuit's *sua sponte* decision that district courts do not have federal jurisdiction over claims arising under the Constitution is in error, and secondly, whether district courts have the authority to issue sanctions against parties for blatant misconduct and disregard for the court's inherent authority.

II. *PETITIONER'S CLAIMS CLEARLY AROSE UNDER FEDERAL LAW, AS DETERMINED BY BOTH THE DISTRICT COURT AND THE RESPONDENT.*

The Sixth Circuit Court of Appeals improperly concluded

that the district court lacked federal subject matter jurisdiction, and remanded the matter to the state court. Respondent, eager for anything to set aside the sanctions imposed against it by the district court, now argues that the district court never had jurisdiction ***in a matter that was removed by Respondent based upon federal subject matter jurisdiction***. In its Notice of Removal, Respondent asserted that Overstreet's claim was "an action founded on a claim or right arising under the laws of the United States over which this Court has original jurisdiction." Notice of Removal at 2.

The district court, in rejecting Overstreet's request to remand, held that "in addition to the allegations that the respondent violated the Fourth Amendment, petitioner also complained ... that the policy under which he was disciplined was unconstitutionally vague and unconstitutional as applied." The court continued, stating "it is clear that the present case explicitly presents a Fourth Amendment question, and also raises the various federal constitutional challenges to the respondent's policy...." After addressing the caselaw pertaining to removal, the court stated "there is no question that federal law is an essential element of the plaintiff's cause of action."

Ironically, Respondent repeatedly argued this same position, i.e., that "the Petition's allegation of violation of Overstreet's rights under the United States Constitution provided the grounds for the Commission's Notice of Removal of the civil action [] as an action founded on a claim arising under the laws of the United States over which this Court has original jurisdiction." Response at 2. The Respondent further asserted, in its Brief filed with the Sixth Circuit, that "the Commission filed a notice of removal ... on the grounds the District Court had original jurisdiction of federal claims..." For Respondent to now assert that the district court lacked subject matter jurisdiction in a case where the ***Respondent*** strenuously argued it had properly removed, is absurd.

Petitioner's state law Petition, averred, specifically, that "the Commission's decision, upholding the unconstitutional actions by the LFUCG, ***constitutes a further violation of Petitioner's constitutional rights as afforded under the Fourth Amendment to the United States Constitution***." The Petition further set forth that the basis for the Federal Constitutional Due Process claim arose from the Commission's unconstitutional actions, including the "Commission's failure to make specific findings of fact," [¶ 3], a lack of a quorum, [id.], that "Petitioner was singled out for disciplinary treatment, [¶ 4], that "[t]he Commission arbitrarily and unilaterally enforced a time limitation against Petitioner ... and arbitrarily denied Petitioner the right to utilize additional time," [¶ 6], that "[t]he Commission arbitrarily ... refused to pass on whether the policy, as implemented, was appropriate, as well as whether the discipline was constitutional given the lack of discipline to other individuals, the lack of prior notification to the Petitioner, and the vague nature of the policy," [¶ 7], and, that the Commission arbitrarily refused to allow Petitioner to proffer additional evidence that was improperly excluded from the hearing due to the unconstitutional time restraints, [¶ 8].

These allegations clearly form the basis for federal jurisdiction under 28 U.S.C. § 1331, which was why Respondent sought, and received, removal of the within action to federal district court. Based upon the district court's well-reasoned decision that Petitioner's federal Constitutional Due Process rights ***had, in fact, been violated***, as well as City of Chicago v. Int'l College of Surgeons, 522 U.S. 156, 164 (1997), it is incomprehensible that the Sixth Circuit Court of Appeals would ignore these factors and *sua sponte* declare that Petitioner's claims alleging Fourth Amendment and Constitutional Due Process violations, and the unconstitutionality of the policy, were somehow insufficient to trigger federal subject matter jurisdiction.

Certiorari to the Sixth Circuit Court of Appeals is essential

to insure proper application of 28 U.S.C. § 1331, as well as to maintain uniformity among the Circuits and conformity to this Court's mandates pertaining to post-deprivation review by federal district courts of state administrative appeal claims asserting constitutional violations.

III. *SANCTIONS IMPOSED BY THE DISTRICT COURT SHOULD NOT BE SET ASIDE EVEN IF REMOVAL WAS IMPROPER.*

Respondent asserts that the Sixth Circuit's *sua sponte* dismissal should wipe away all of Respondent's indiscretions and improprieties. In so doing, Respondent misstates the district court's rulings. The district court herein sanctioned Respondent after it repeatedly and blatantly ignored the district court's mandates. In its order, the district court stated that "the record in this action is replete with demonstrations of the unwillingness or inability of the [Commission] to furnish a complete transcript for this Court to review... the [Commission] then chose to ignore this Court's Order in the ensuing months, needlessly adding to the delay and cost of this litigation ... The [Commission's] actions effectively prevented the proper application of corrective judicial process." [Appx. 19a]. After addressing the various acts of misconduct, the District Court expressly concluded that, even assuming, *arguendo*, that the Court would have ruled in favor of Defendant, "[***the award of attorneys' fees] is justified as a discovery sanction for the [Commission's] repeated and documented refusal to comply with this court's orders***." Id. Finally, Respondent's assertion that no sanctions were imposed is a blatant falsehood. The district court's order expressly asserts that the judgment "***is justified as a discovery sanction***." Moreover, the district court further assessed sanctions against Respondent for its ongoing misconduct, when it ruled that "Petitioner's motion for costs is GRANTED. Petitioner is awarded $3,860 from respondent due to the discovery dispute." [Appx. 17a]

Unquestionably, federal district courts maintain jurisdiction to issue sanctions, costs, or fees, against a party who engages in misconduct, notwithstanding an ultimate determination that the district court lacks jurisdiction. See, e.g., 28 U.S.C. §1447(c). In fact, a court even has the authority to enter default judgment when it is later determined that the court lacked jurisdiction. Allen v. Exxon Corp., 102 F.3d 429, 431 (9th Cir. 1996). This Court has long recognized that a district court has the inherent power to sanction a party when that party exhibits bad faith, including the party's refusal to comply with court orders. Chambers v. Nasco, Inc., 501 U.S. 32, 43-50 (1991); Roadway Express, Inc. v. Piper, 447 U.S. 752, 765-66 (1980).

Fed. R. Civ. P. 37(c)(1) expressly authorizes a district court to impose monetary sanctions on a party for refusal to obey a discovery order. If such provisions are emaciated by a subsequent determination of a lack of subject matter jurisdiction, the orderly process of the court system would be turned on its proverbial head. The Sixth Circuit's decision completely undermines the district court's ability to monitor and control the cases appearing before it, and effectively condones behavior that the district court recognized as being grossly improper. *Certiorari* is necessary so as to assure that district courts do not lose the ability to effectively discipline offending parties and control unruly behavior and misconduct.

CONCLUSION

WHEREFORE, Petitioner PHILIP D. OVERSTREET respectfully requests that this Court GRANT his Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit in order to ensure consistent treatment of the removal to federal court of state court administrative processes alleging violations of the United States Constitution and to afford district courts the ability to control parties' conduct.

Respectfully submitted,

JAMES M. MORRIS
Counsel of Record
MORRIS & MORRIS, P.S.C.
217 North Upper St.
Lexington, KY 40588-0394
(859) 281-6981
Counsel for Petitioner

Dated: May 2, 2005